

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CLAIRE J. KAY and CLAYMORE
CONSTRUCTION CO.,

Case No. 09-11887

Plaintiffs/Counter-Defendants,

Honorable John Corbett O'Meara

v.

UNITED OF OMAHA LIFE INSURANCE
COMPANY d/b/a MUTUAL OF OMAHA
INSURANCE COMPANY,

Defendant.

**ORDER DENYING DEFENDANT'S RENEWED MOTION FOR JUDGMENT
AS A MATTER OF LAW OR, IN THE ALTERNATIVE, FOR A NEW TRIAL**

This matter came before the court on defendant United of Omaha Life Insurance Company's May 21, 2015 Renewed Motion for Judgement as a Matter of Law or, in the Alternative, for a New Trial. Plaintiffs filed a response June 4, 2015; and Defendant filed a reply June 19, 2015. No oral argument was heard.

Following a second trial by second jury, Plaintiffs were again awarded two million dollars (\$2,000,000) as the proceeds of a life insurance policy. Defendant United seeks judgment as a matter of law or a new trial.

In a diversity action a motion for judgment as a matter of law under Rule 50(b) of the Federal Rules of Civil Procedure, brought on the grounds that no evidence existed to support judgment in favor of the non-moving party, is analyzed under the law of the forum state. See Betts v. Costco Wholesale Corp., 558 F.3d 461, 466 (6th Cir. 2009). Under Michigan law, the motion must be

granted if "after viewing all of the evidence in the light most favorable to the non-moving party, 'reasonable minds could not differ on any question of material fact.'" Id.

In analyzing a motion for new trial pursuant to Rule 59, brought on the basis that the verdict was against the clear weight of the evidence, the court must apply federal law and "accept the jury's verdict if it was reasonably reached." Ridgway v. Ford Dealer Computer Servs., Inc., 114 F.3d 94, 98 (6th Cir. 1997).

Defendant's motion restates the same arguments presented in previous motions for summary judgment, for directed verdict, and for judgment as a matter of law. Regarding all of these, this court concluded, as it does again, that reasonable minds can differ on the questions of material fact that were presented to the jury. Likewise, the court again accepts a second jury verdict, finding that it too was reasonably reached.

Therefore, it is hereby **ORDERED** that Defendant's May 21, 2105 Renewed Motion for Judgment as a Matter of Law or, in the Alternative, for New Trial is **DENIED**.

s/John Corbett O'Meara
United States District Judge

Date: April 6, 2016

I hereby certify that a copy of the foregoing document was served upon counsel of record on this date, April 6, 2016, using the ECF system.

s/William Barkholz
Case Manager